

ORIGINAL

LUNSFORD DOLE PHILLIPS #4407
1620 Pioneer Plaza
900 Fort Street Mall
Honolulu, Hawaii 96813
Telephone: (808) 533-1734
Fax: (808) 545-2411
E-mail: lunsfordp001@hawaii.rr.com

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JAN 05 2009
at 12 o'clock and 01 min. P.M.
SUE HEITIA, CLERK

Attorney for Plaintiffs
SUSAN WARREN and LARRY LITTLETON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

SUSAN WARREN and)	CIVIL NO. 08-00217 ACK/BMK
LARRY LITTLETON,)	
)	SECOND AMENDED
Plaintiffs,)	COMPLAINT; DEMAND FOR
)	JURY TRIAL; SUMMONS
vs.)	
)	
MARRIOTT HOTEL SERVICES,)	
INC. and HPT TRS MI-135, INC.)	
)	
Defendants.)	
_____)	

SECOND AMENDED COMPLAINT

Plaintiffs SUSAN WARREN and LARRY LITTLETON, through their undersigned counsel, aver and allege as follows:

JURISDICTION

1. Pursuant to 28 U.S.C. § 1332 the parties' diversity of citizenship and likely damages in excess of the jurisdictional requirement confer jurisdiction on this court to adjudicate one of the plaintiffs' state common law claim of negligence, and pursuant to 28 U.S.C. § 1367 this court may exercise pendant jurisdiction over the other plaintiff's independent but derivative claim for loss of consortium.

VENUE

2. The venue is proper in this Court because all matters and events are directly connected to the District of Hawaii.

PARTIES

3. Plaintiff SUSAN WARREN ("WARREN") is a resident of Lihue, Hawaii, who was at the material time an invitee on the defendant's premises. Plaintiff LARRY LITTLETON ("LITTLETON") is a resident of Lihue, Hawaii, who is and was at the material time the lawful husband of WARREN.

4. Defendants MARRIOTT HOTEL SERVICES, INC. and HPT TRS MI-135, INC. ("collectively MARRIOTT") are foreign profit corporations operating a hotel with at least one on-premises restaurant in the District of Hawaii known as the Kauai Marriott Resort & Beach Club and located at 3610 Rice Street, Lihue, Hawaii. MARRIOTT HOTEL SERVICES, INC. and HPT TRS MI-135 INC. are both incorporated in Delaware. MARRIOTT HOTEL SERVICES, INC. has been registered in the State of Hawaii since 1994 and HPT TRS MI-135, INC. since 2001. Upon belief both corporations are in good standing with the State of Hawaii Department of Commerce & Consumer Affairs' Business Registration Division.

5. WARREN alleges to have sustained severe permanent injuries as a proximate cause of MARRIOTT's breach of the duty of care it owed her, resulting in damages that substantially exceed diversity jurisdiction's requirement.

FACTS

6. On December 16, 2006, WARREN was patronizing MARRIOTT's enterprise in Lihue, Hawaii, known as the Kauai Marriott Resort & Beach Club. She had dined at a restaurant on MARRIOTT's property.

7. On that date WARREN accompanied her companion and fellow patron to their vehicle, walking down a sidewalk parallel to a portion of MARRIOTT's building that was under its control. MARRIOTT knew or should have known it was reasonable that persons would walk on that sidewalk. MARRIOTT also knew or should have known that the swing of a fire door intended to be used as an emergency exit would encroach on the space occupied by a person walking down the middle of the sidewalk.

8. As WARREN and her companion walked down that sidewalk, they passed that fire door/emergency exit which MARRIOTT knew or should have known opened away from the building onto the sidewalk and into the space likely to be occupied by persons who were walking down the middle of the sidewalk.

9. MARRIOTT took no actions to prevent or dissuade persons from using that sidewalk despite the fact that MARRIOTT knew it had done nothing to the sidewalk or the door to warn persons of the presence of that door and/or its opening out onto the sidewalk, creating an unreasonable and unnecessary risk it would strike persons walking down the middle of the sidewalk.

10. MARRIOTT took no effective precautionary actions to warn persons walking down the sidewalk passing by that door when it was about to open onto

the sidewalk, creating an unreasonable and unnecessary risk it would strike persons walking down the middle of the sidewalk.

11. On December 16, 2006, the door suddenly sprang open with great force and speed, swinging into the space where WARREN was walking, and struck her violently on the right side of her body as she passed the door.

12. As a result of the powerful blow struck by the door WARREN sustained severe and permanent injuries for which she has needed and continues to need medical treatment and which have adversely affected her physically and emotionally.

COUNT ONE

13. As an innkeeper MARRIOTT owed an enhanced legal duty to use care to avoid injuring its guests such as WARREN.

14. On December 16, 2006, MARRIOTT breached its legal duty by failing to use requisite care to avoid injuring WARREN.

15. MARRIOTT's breach of duty was the proximate cause of severe permanent and continuing physical and emotional injuries to WARREN.

16. WARREN is consequently entitled to monetary damages in excess of the Court's jurisdictional requirement in an amount to be shown at trial.

COUNT TWO

17. LITTLETON is and was at all material time the lawful husband of WARREN.

18. Since December 16, 2006, LITTLETON has been deprived the full measure of WARREN's consortium in ways to be shown at trial.


19. LITTLETON's loss of marital consortium was proximately caused by MARRIOTT's breach of its legal duty owed WARREN.

20. LITTLETON is consequently entitled to monetary damages for the loss of WARREN's consortium in an amount to be shown at trial.

THEREFORE THE PLAINTIFFS SEEK:

- A) Judgment in favor of one or both of the plaintiffs and against the defendant;
- B) Legal relief in the form of compensatory and punitive damages in an amount substantially more than the court's jurisdictional requirement;
- C) Costs of suit and related litigation expenses;
- D) Prejudgment and postjudgment interest; and
- F) All such other relief she might further seek to which they have a right.

DATED: Honolulu, Hawaii, 1/4/09.




LUNSFORD DOLE PHILLIPS
Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs request trial by jury on all issues so triable.

DATED: Honolulu, Hawaii, ~~5/28/08~~ 1/5/09



LUNSFORD DOLE PHILLIPS
Attorney for Plaintiffs